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Paper No. 7

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In re Application of	:	OFFICE OF PETITIONS
Aleks D. Nikolich	:	
Application No. 10/077,732	:	DECISION DISMISSING
Filed: 19 February, 2002	:	PETITION
Attorney Docket No. Case 1	:	

This is a decision in reference to the "Request for Reconsideration" filed by facsimile on 14 March, 2003, which is being considered as a request, filed in Application No. 10/077,732, for the Office to reconsider the decision mailed in Application Nos. 10/077,732 and 10/084,075 on 12 February, 2003.

The petition is dismissed.

Petitioner states, in pertinent part:

As a brief summary background, the present occasion was caused by the anthrax episode in the Patent Office in October, 2001.

. . .

Quite a number of points were covered in the Decision mentioned but there was one main point that was not covered and it is believed that that one main point is determinative of the overall conclusion, and it would better to present this simple request on one point than to cover all the points involved; which are many, at this time, because it is believed the extensive request could be avoided by re-considering the one main point referred to here.

In a telephone conversation between the undersigned and the Patent Office on December 14, 2001, the undersigned was advised not to file a new substitute application. This point was referred to in

the Request to Establish Filing Date (identified hereinabove

This point was not acknowledged in the Decision.

However, if such a substitute application had been filed at that time, the present trouble would not have occurred.

Petitioner's argument has been considered but is not persuasive. At the outset, petitioner is reminded that all business between applicants and the USPTO must be transacted in writing. The action of the USPTO will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.¹ As such, petitioner was not entitled to rely on oral advice as to whether or not to file any application papers.

This having been said, as stated in the decision mailed on 12 February, 2003, the rules of practice (*i.e.*, the "Express Mail" provisions of 37 CFR 1.10) **did** provide a manner in which petitioner could have avoided the predicament which has now occurred. As stated in the earlier decision, had petitioner deposited the application papers in USPS "Express Mail Post Office to Addressee Service" rather than first class mail, petitioner would have been entitled to a filing date as of the date the application papers were deposited in Express Mail regardless of when the papers were received in the USPTO. Instead of using Express Mail service, however, petitioner simply deposited in the application in first-class mail. In relying on first-class mail for delivery of the application papers, petitioner assumed the risk, however slight, that there might be an extensive delay in the delivery of mail to the USPTO, leading to a loss of entitlement to the desired filing date. Petitioner's failure to take advantage of the established procedures does not entitle petitioner to a filing date of petitioner's choosing. As the record clearly indicates that the application papers were received in the USPTO on 19 February, 2002, and were not sent pursuant to the provisions of 37 CFR 1.10, the application is entitled to a filing date of 19 February, 2002.

¹ 37 CFR 1.2

As stated in the prior decision and in the present petition, the earlier of petitioner's application was received on 19 February, 2002. If petitioner desires not to prosecute the later filed application, No. 10/084,075, petitioner may wish to consider filing a letter of express abandonment under 37 CFR 1.138 in Application No. 10/084,075.

The petition is dismissed.

The application is being forwarded to Technology Center 3600 for further processing with a filing date of 19 February, 2002.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6918.



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